IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Norfolk Division

UNITED STATES OF AMERICA	)	
	)	
v.	)	**CRIMINAL NO. 2:16cr119**
	)	
ROBERT LEE PETTY,	)	
	)	
Defendant.	)	

POSITION OF THE UNITED STATES WITH RESPECT TO SENTENCING

The United States of America, by Dana J. Boente, United States Attorney, and Elizabeth M. Yusi, Assistant United States Attorney, offers this position paper regarding the sentencing factors stated in 18 U.S.C. § 3553(a). The government has no objection to the content of the PSR. According to the PSR, the correct advisory calculation under the United States Sentencing Guidelines (U.S.S.G. or "Guidelines") is 262-327 months' imprisonment. Based on the nature of the offenses and related conduct, the United States asks the Court to impose a sentence within the Guidelines. In support of its position, the government states as follows:

I. BACKGROUND

On September 1, 2016, defendant ROBERT LEE PETTY ("defendant" or PETTY) pleaded guilty before this Court to one count of Production of Child Pornography, in violation of 18 U.S.C. § 2251. The Court is scheduled to sentence the defendant on February 6, 2017. At that hearing, the government will maintain that a Guidelines sentence of imprisonment is reasonable and appropriate given the serious facts and circumstances underlying the instant case.

The investigation of PETTY began on March 28, 2016, when a FBI Task Force Officer (TFO) was contacted by J.S., the mother of then 15-year-old Jane Doe. J.S. stated that over the past four years, defendant Robert Lee PETTY directed Jane Doe to take sexually explicit photos and videos of herself in exchange for money, clothing, and shoes, among other things. J.S. and PETTY were dating and living together, along with Jane Doe, for approximately nine years. Initially, they lived at a residence in Newport News, VA, from approximately 2008 to 2012. Jane Doe stated that PETTY's sexual demands began at that address. Then, they all moved to a residence in Virginia Beach from 2012 to 2015, where the abuse continued. J.S., PETTY, and Jane Doe then moved to another house in Virginia Beach approximately 1½ years ago. Jane Doe stated that PETTY had her create sexually explicit movies and images while at that address as well.

On April 11, 2016, Jane Doe was interviewed by a Forensic Child Interviewer. Jane Doe stated that, beginning when she lived in Newport News with PETTY, PETTY would ask for nude pictures and videos of her via cameras and her iPhone. The abuse started when Jane Doe was only 11 years old. PETTY was very specific as to what Jane Doe would have to do in the images, the length of the videos, and other details. Initially, Jane Doe, at PETTY's request, would create sexually explicit videos and images on her iPhone and send them electronically to PETTY's cellular phone via text message. Jane Doe stated she also, at PETTY's request, took videos and images via two different cameras.

PETTY would leave a camera on her desk located in her bedroom and tell her to "use her time wisely." Based on the years of specific instruction, Jane Doe knew this meant she was to take photos and videos of her genitals and put them back in PETTY's nightstand for his viewing. On another night, PETTY instructed Jane Doe to make three specific videos; each had to be five minutes in length. Jane Doe highlighted two specific types of movies PETTY requested: one involved rubbing lotion on her body nude and one involved her stretching nude as she would before an athletic event.

J.S. provided consent to the FBI to search one purple Kodak digital camera and one iPhone 6, both of which were manufactured outside of Virginia. On April 12, 2016, a Forensic Examiner examined the items. He found numerous sexually explicit videos and images of Jane Doe, just as she had described in her interview. A few of the videos included images of PETTY setting up the camera.

When investigators first spoke with PETTY, he denied seeing any pictures or videos of Jane Doe without clothes on or having her make any videos or images for him. He stated he just tried to be a father to her, similar to what he states in his position paper. Later, when confronted with the videos that included PETTY setting up the camera, PETTY reported that J.S. suggested that Jane Doe make topless videos as a form of punishment, to which he agreed. The defendant noted that the videos began 3 or 4 years ago and that he could not recall how many times he enforced this type of "discipline." In reality, J.S. knew nothing about this sort of activity or "discipline."

II. STANDARDS GOVERNING SENTENCING

In *United States v. Booker*, 543 U.S. 220 (2005), the Supreme Court rendered the Sentencing Guidelines purely advisory, but emphasized that a sentencing court must consider both the Guidelines and the 18 U.S.C. § 3553(a) factors when making a sentencing decision. *Id.* at 264. The Supreme Court reaffirmed this principle in *United States v. Kimbrough*, 552 U.S. 85 (2007), emphasizing that "the Guidelines, formerly mandatory, now serve as one factor among several courts must consider in determining an appropriate sentence." *Id.* at 90. Finally, in *Gall v. United States*, 552 U.S. 38 (2007), the Supreme Court instructed that the sentencing court should calculate the Sentencing Guideline range, permit the government and the defendant "an opportunity to argue for whatever sentence they deem appropriate," consider all of the § 3553(a) factors, and finally pronounce a sentence taking into account all of the relevant factors. *Id.* at 49-50. The *Gall* Court further instructed that, in the event that the sentencing court decides to impose a variance sentence, the court "must consider the extent of the deviation and ensure that the justification is sufficiently compelling to support the degree of the variance." *Id.* (noting that a "major departure should be supported by a more significant justification than a minor one.").

Applying these standards, the Fourth Circuit has concluded that a sentencing court must: "(1) properly calculate the Guideline range; (2) allow the parties to argue for the sentence they deem appropriate and determine whether the § 3553(a) factors support the sentences requested by the parties; and (3) explain its reasons for selecting a sentence." *United States v. Simmons*, 269 Fed. App'x 272 at *1 (4th Cir. 2008) (*citing United States v. Pauley,* 511 F.3d 468, 473 (4th Cir. 2007)).

III. FACTORS UNDER 18 U.S.C. § 3553(a)

Under 18 U.S.C. § 3553(a), when imposing a sentence, the Court should consider (1) the nature and circumstances of the offense, (2) the history and characteristics of the defendant, (3) the need for the sentence imposed to promote the goals of sentencing, (4) the kinds of sentences available, (5) the sentencing guideline range, (6) any pertinent policy statement issued by the Sentencing Commission, (7) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct, and (8) the need to provide restitution to any victims of the offense.

A. Nature and Circumstances of the Offense and Defendant's History and Characteristics

PETTY's conduct to which the defendant has pleaded guilty, production of child pornography, is one of the most offensive and serious crimes in the entire criminal code; it always involves a real-life child and real-life abuse (rather than viewing it as a third party). PETTY was not just on the Internet trolling for image files. Rather, over a period of years, PETTY forced Jane Doe into videotaping herself according to his demands. PETTY twisted his relationship with Jane Doe, who he had known since she was approximately 8 years old, to satisfy his own perverted sexual desires. When confronted with what he actually did, PETTY called it a form of "discipline." This crime is vile, as is PETTY's initial description of his reasoning behind it.

While it is favorable to PETTY that he accepted responsibility so as to not make Jane Doe go through a trial, the length of time PETTY was involved in this activity and the impact that it has had on the victim and her family does not bode well for the defendant. The government believes the exceptional facts and circumstances of this case warrant a Guidelines sentence of incarceration.

B. Defendant's Criminal History

The defendant has no relevant criminal history. However, as this Court knows, this is not unusual in child pornography cases and should not be given much weight in the Court's determination of a sentence. Further, in part due to the number of times PETTY abused his victim and the length of time that he was involved in this activity, his lack of criminal history provides no basis for a downward departure or variance from the Guidelines since it under-represents his actual crimes.

C. Need to Deter Future Criminal Conduct and to Protect the Public

Defendant's sentence needs to accomplish the twin goals of deterring the defendant from engaging in future criminal conduct and to protect the public. Based on PETTY's actions, PETTY clearly has many issues, which included a sexual interest in a young girl. Further, based on PETTY's psychological evaluation, he may have some mental issues beyond this sexual interest. The government avers that, if given the opportunity, the likelihood that PETTY will return to this predatory behavior in the future is strong if he is allowed to be in a position of control or power, as he was with Jane Doe. Due to the seriousness of the offenses, as set forth above, adequate punishment, deterrence and protection of the public all call for a severe sentence of imprisonment. 18 U.S.C. § 3553(a)(2).

D. Need to Provide Treatment to Defendant

Due to the nature and duration of the defendant's crimes, defendant should be ordered to participate in a sex offender and mental health treatment program while incarcerated, as well as on supervised release.

E. Need to Avoid Unwarranted Sentencing Disparities

PETTY's crimes, history and characteristics, along with his actions related to the crimes of conviction, all support a severe sentence of imprisonment. As such, the need to avoid unwarranted sentence disparities clearly weighs in favor of a severe Guidelines sentence. 18 U.S.C. § 3553(a)(6).

IV. CONCLUSION

The government agrees that the PSR's Guidelines calculations are correct. For the reasons stated above, the government asks the Court to impose a sentence within the Guidelines.

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By: /s/

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of January, 2017, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

Kirsten Kmet, Esq.

I ALSO CERTIFY that on this 30th day of January, 2017, I caused a true and correct copy of the foregoing Position of the Government with Respect to Sentencing Factors to be sent to the following:

Leah Greathouse
U.S. Probation Officer

/s/

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